



[TRANSLATION]

Citation: *NG v Canada Employment Insurance Commission*, 2024 SST 1564

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (472033) dated May 10, 2024
(issued by Service Canada)

Tribunal member: Jacques Bouchard

Type of hearing: Videoconference

Hearing date: September 23, 2024

Hearing participant: N. G.

Decision date: September 23, 2024

File number: GE-24-2967

Decision

[1] The appeal is dismissed. But I find that several humanitarian reasons should be considered in this case.

[2] The Appellant has to legally pay back \$2,000 of the Employment Insurance Emergency Response Benefit (EI ERB) advance payment she received.

Overview

[3] The EI ERB is a benefit that was created at the beginning of the COVID-19 pandemic.¹ The amount of the EI ERB was \$500 per week.² But the Canada Employment Insurance Commission (Commission) gave claimants an advance payment of four weeks of the EI ERB (\$2,000) when they first applied.

[4] The Appellant applied for the EI ERB on March 19, 2020. The Commission paid her the \$2,000 advance payment on April 6, 2020. The Commission also paid the Appellant 11 weeks of the EI ERB. In total, the Appellant received \$7,500 in EI ERB.

[5] I have to decide whether the Appellant has to pay back \$2,000 of the EI ERB advance payment she received.

[6] The Commission says that the Appellant was overpaid \$2,000. She should have received only \$5,500.

[7] The Appellant disagrees and says that she paid taxes on the total of \$7,500, has since gotten divorced, and lives in poverty on part-time work. She admits that she did receive the amount, but that she is now in such financial need that she doesn't see how she could pay it back.

¹ Part VIII.4 of the *Employment Insurance Act* (Act) sets out the rules for the Employment Insurance Emergency Response Benefit (EI ERB).

² See section 153.10(1) of the Act.

[8] The Appellant wants the amount owed to be written off because of her financial situation and also because she paid taxes on the amounts she received.

Issue

[9] Does the Appellant have to pay back the EI ERB advance payment she received?

Analysis

Does the Appellant have to pay back the EI ERB advance payment?

[10] I find that the Appellant has to pay back the EI ERB advance payment she received.

[11] Between March 15, 2020, and October 3, 2020, claimants could apply for the EI ERB for two weeks at a time.³ The law allowed the Commission to pay claimants the EI ERB before it would normally pay it.⁴

[12] The Commission paid the Appellant the \$2,000 advance payment as soon as she first applied. This was equal to four weeks of the EI ERB. The Commission planned to recover this advance payment by holding back four weeks of benefits later on—usually the 13th, 14th, 18th, and 19th weeks of benefits claimed.

[13] The Commission says that, because of the advance payment, the Appellant received a total of 15 weeks of benefits, but should have received only 11 weeks of benefits. The Commission wasn't able to recover \$2,000 of the advance payment because the Appellant wasn't eligible for benefits for the weeks when it planned to recover that amount. So the Appellant was overpaid \$2,000 in EI ERB.

³ See sections 153.7(1) and 153.8 of the Act.

⁴ See section 153.7(1.1) of the Act.

[14] The Appellant agrees that she was paid the \$2,000 advance payment and 11 weeks of the EI ERB. She says that she stopped claiming the EI ERB after 11 weeks and wasn't eligible for any more weeks of EI ERB because she had gone back to work.

[15] I find that the Appellant was paid a total of 15 weeks of the EI ERB, but she should have received only 11 weeks of benefits. She doesn't dispute this.

[16] Since the Appellant received four more weeks of the EI ERB than she should have received, she was overpaid \$2,000.

[17] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.⁵ So, the Appellant has to pay back this amount.

[18] The Appellant is asking for the overpayment to be written off. She says her marital status has changed since 2020; she is now divorced and works 20 to 25 hours per week. She is struggling financially, it is already hard for her to meet her obligations, and she had to pay taxes on the overpayment. She wants the overpayment written off. At the hearing, she said that paying back this amount would cause her significant hardship.

[19] I can only apply the law that is set out in the *Employment Insurance Act* and *Employment Insurance Regulations*. I can't change the law or give the Appellant another decision, even if I sympathize with her situation.⁶

[20] I can't write off the Appellant's overpayment.⁷ But the Commission can decide to write off an overpayment in certain situations—for example, if paying it back would cause undue hardship. The Appellant can ask the Commission to write off her

⁵ See sections 43 and 44 of the Act.

⁶ See *Canada (Attorney General) v Hamm*, 2011 FCA 205; and *Granger v Canada Employment and Immigration Commission*, A-684-85.

⁷ See sections 153.1306, 153.1307, and 113 of the Act.

overpayment. Or, she can contact the Canada Revenue Agency (CRA) to discuss payment arrangements.

Conclusion

[21] The Appellant has to pay back \$2,000 of the EI ERB advance payment she received, unless the Commission decides to write off that amount in light of the hardship caused to the Appellant.

[22] This means that the appeal is dismissed.

Jacques Bouchard
Member, General Division – Employment Insurance Section